

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 24, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2579

Cir. Ct. No. 2015CV457

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**STATE OF WISCONSIN EX REL. PRIVATE ATTORNEY GENERAL
THOMAS LEE ANDERSON,**

PLAINTIFF-APPELLANT,

V.

**JON M. THEISEN, D/B/A EAU CLAIRE COUNTY JUDGE JON M.
THEISEN,**

DEFENDANT-RESPONDENT.

APPEAL from orders of the circuit court for Eau Claire County:
ROD W. SMELTZER, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Thomas Anderson, pro se, appeals from an order dismissing his action challenging the authority of a circuit court judge to act in a prior foreclosure action in which Anderson was a defendant, and denying a motion

for temporary injunction related to the foreclosure action. Anderson also appeals the denial of a motion for reconsideration. We affirm.

¶2 In a previous appeal, we affirmed the denial of a motion for relief from a default judgment in the foreclosure action involving Anderson. *See Bank of America NA v. Anderson*, No. 2013AP1726, unpublished slip op. (WI App Aug. 26, 2014). Our supreme court subsequently denied Anderson’s petition for review. Thereafter, Anderson filed a separate pro se civil action against the presiding judge in the foreclosure matter, seeking to void the default judgment, prevent a sheriff’s sale of his property, and remove the lis pendens.

¶3 The circuit court denied Anderson’s motion for a temporary injunction and dismissed the action, finding the matter frivolous. The court noted the majority of the allegations pertained to the foreclosure action and it was unable to rule on matters relating to that case. The court also rejected Anderson’s claims that the judge in that matter lacked authority to act as judge. A motion for reconsideration was also denied. The court stated:

Again, the Court finds the pleadings submitted by the plaintiff are an attempt to delay the finality of the [foreclosure] judgment in Eau Claire County case no. 12CV54 and to inundate the courts with irrational, frivolous and unreasonable filings.

¶4 We affirm the circuit court’s orders in the present case. The court properly rejected Anderson’s attempts to delay the finality of the foreclosure judgment. We affirmed the foreclosure judgment on appeal and our supreme court denied Anderson’s petition for review. Anderson’s contention that the foreclosure was void because the judge “falsely assumed and acted ... in the capacity of a Judge” is similarly unavailing. The judge in the foreclosure action took and subscribed an official oath of office in the form required by WIS. STAT.

§ 757.02(1).¹ The official oath was subscribed and sworn to by a notarial officer whose commission is permanent.² The official oath was properly filed in the office of the Secretary of State. Contrary to Anderson’s perception, there is no constitutional or statutory requirement that a circuit court judge file an official bond.

¶5 Anderson argues the oath of office was not “authenticated.” This argument is unsupported by citation to legal authority and we shall therefore not further address the issue. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Anderson also argues the oath did not include the official stamp or seal of the notary. Wisconsin’s uniform law on notarial acts requires that a notarial officer must sign and date the notarial certificate, must identify the jurisdiction in which the notarial act is performed, and must identify the title of the office of the notarial officer. *See* WIS. STAT. § 706.07(7)(a). Although the certificate “may” include the official stamp or seal of office, it is not mandatory that the official seal of the notarial officer be included.³

¹ References to the Wisconsin Statutes are to the 2015-16 version.

² We note WIS. STAT. § 706.07(3)(a)1.-2. permits a notarial act to be performed by a judge as well as a notary public. The official oath of office in the present case was performed by a judge who also served in his capacity as a notarial officer.

³ The response brief argues that Anderson’s action against the circuit court judge is also barred by absolute judicial immunity under *Ford v. Kenosha County*, 160 Wis. 2d 485, 495, 466 N.W.2d 646 (1991); public officer immunity under *Lister v. Board of Regents*, 72 Wis. 2d 282, 300, 240 N.W.2d 610 (1976); and by failure to serve a written notice of claim pursuant to WIS. STAT. § 893.82(3). Anderson offers no argument countering these arguments; indeed, he does not even attempt to address these issues in his reply brief. We therefore deem the issues conceded. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶6 Anderson's motion for a temporary injunction to stop a sheriff's sale until the merits of his present complaint seeking to void the foreclosure judgment had been litigated through the courts was baseless. The circuit court properly dismissed the matter.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

